IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

DEBORAH K. JENNINGS,)	
)	
Plaintiff,)	
)	
v.)	No. 3:12-cv-00507
)	Phillips/Shirley
THE UNIVERSITY OF)	
TENNESSEE and DAVE HART,)	
)	
Defendants.)	

MOTION TO DISMISS DAVE HART

Dave Hart, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully moves the Court to dismiss Plaintiff's claims against him in their entirety. As grounds for this motion, Hart asserts the following:

- 1. All claims against Hart are subject to dismissal because Hart is a state employee and, therefore, he is immune from individual liability by the provisions of Tenn. Code Ann. § 9-8-307(h).
- 2. Plaintiff's claims against Hart for disability-based retaliation are subject to dismissal because Tennessee law does not recognize individual liability for disability-based retaliation under Tenn. Code Ann. §§ 4-21-101 *et seq.*, the Tennessee Human Rights Act (the "THRA"), or under Tenn. Code Ann. § 8-50-103 *et seq.*, the Tennessee Disability Act (the "TDA").
- 3. Plaintiff's claims against Hart for aiding and abetting liability under Tenn. Code
 Ann. § 4-21-301(2) are subject to dismissal because Hart's actions were within

the scope of his supervisory duties and thus cannot, as a matter of law, give rise to individual aiding and abetting liability.

4. Plaintiff's claims against Hart for retaliation under Tenn. Code Ann. § 4-21-301(1) are subject to dismissal because Hart's actions were within the scope of his supervisory duties and thus cannot, as a matter of law, give rise to individual liability for retaliation.

In support of this motion, Hart relies upon the contemporaneously submitted memorandum of law.

Respectfully submitted this 30th day of November, 2012.

/s/ Edward G. Phillips
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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

/s/ Edward G. Phillips